

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

JOHN A. SAMS, #1588042

§

VS.

§

CIVIL ACTION NO. 2:17cv607

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

Petitioner John A. Sams, proceeding *pro se* and *in forma pauperis*, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging the denial of street-time credit upon his parole revocation. The cause of action was referred to United States Magistrate Judge, the Honorable Roy S. Payne, for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On March 23, 2020, Judge Payne issued a Report, (Dkt. #24), recommending that Petitioner's habeas petition be denied, and that Petitioner be denied a certificate of appealability *sua sponte*. A copy of this Report was sent to Petitioner at his address, with an acknowledgment card. Petitioner has filed timely objections. (Dkt. #26).

Petitioner has filed objection arguing that he is eligible for mandatory supervision under the law in effect at the time of his aggravated robbery offense. However, his habeas petition, (Dkt. #1), does not concern eligibility for mandatory supervision; rather, his petition concerned eligibility for the restoration of street-time credits. An issue raised for the first time in an objection to a Magistrate Judge's Report is not properly before the District Court. *See Place v. Thomas*, 61 F. App'x 120 (5th Cir. 2003) (unpublished). As the Magistrate Judge correctly observed, the relevant statute provides that individuals convicted of aggravated robbery are not eligible for restoration of street-time credits. Therefore, Petitioner's objections are without merit.


The Court has conducted a careful *de novo* review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct and Petitioner's objections are without merit. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge, (Dkt. #24), is **ADOPTED** as the opinion of the Court. Petitioner's objections, (Dkt. #26), are **OVERRULED**. It is also

ORDERED that Petitioner's federal habeas petition is **DENIED**. Petitioner is also **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 9th day of April, 2020.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE